IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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I.T.A. No.400 of 2006
Date of Decision:24.10.06

The Shiv Rice & General Mills, Jaitu through its partner Shri Hari Krishan, resident of Jaitu distt. Faridkot (Punjab)

.....Appellant

Vs.

Commissioner of Income Tax, Central Revenue Building, Bathinda

.....Respondent

CORAM:- HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present:- Shri Ram Lal Gupta, Advocate for the appellant.

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RAJESH BINDAL, J.

The assessee has approached this Court by filing the present appeal raising the following substantial questions of law arising out of order dated 13.1.2006 passed by Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (for short, `the Tribunal') in I.T.A. No.468(ASR) 2001 for the assessment year 1998-99:-

"(i)Whether the order of the income tax authorities treating the cash credits in question as the income of the assessee suffer from perversity and is arbitrary and is based upon mere assumptions and presumptions and surmises and conjectures and more so when the creditors themselves have been produced and their statements have been recorded and their affidavits have been adduced and they have confirmed the advancement of the credits and repayment of the credits

and the advances made by most of the creditors have been believed by the income tax authorities themselves?

(ii)Whether without rejecting the account books additions can be made of various cash creditors in the facts and circumstances of the case?

(iii)Whether the impugned orders of the income tax authorities are ultra vires of section 68 of the Income Tax Act?

(iv)Whether in the facts and circumstances of the case the appellant- assessee had discharged the burden of taking the amount in question on credit?"

During the course of assessment proceedings, it was found that the assessee had introduced cash credits in his books of account in the name of 17 persons, the details whereof mentioned in the order of assessment are extracted below:

Sr. No.	**Name of the Ceditor**	**Date of deposit**		**Amount Rs.**
1	Bhola Singh	04.03.1998		19,000
2	Gurpreet Kumar	30.11.1997 21.03.1998 23.03.1998	15000 2000 2000 19000	19,000
3	Jagir Singh	01.12.1997		15,000
4	Bhagwan Singh	25.01.1998	1900	19,000
5	Jagmail Singh	02.12.1997		10,000
6	Amrit Lal	26.01.1998		18,000
7	Darshan Lal	27.02.1998		18,000
8	Sukhwinder Singh	15.03.1998		11,500

Sr. No.	Name of the Ceditor	Date of deposit		Amount Rs.
9	Sukhdarshan Singh	23.2.1998		19,000
10	Balkaran Singh	02.04.1997		19,000
11	Pawan Kumar	27.03.1998		10,000
12	Madan Lal	19.03.1998		10,000
13	Nachhatar Singh	01.04.1997		6,000
14	Natha Singh	18.04.1997		11,000
15	Avtar Singh	25.06.1997 05.03.1998	15000 3000	18,000
16	Jagir Singh num-berdar	04.03.1998		18,000
17	Surinder Kumar	26.3.1998		17,000

As the genuineness of the credit was doubted by the Assessing Officer, the issue was confronted to the assessee. Considering the explanations furnished by the assessee, the Assessing Officer vide its order of assessment dated March 12, 2001 held cash credits to the tune of Rs.2,57,500/- introduced in the books of account, during the year in question, to be not genuine and accordingly made additions on that account.

In appeal before the Commissioner of Income Tax (Appeals) Bathinda, the explanation furnished by the assessee to the tune of credits of Rs.52,000/- was found to be genuine and accordingly the additions were deleted to that extent, however, the addition of balance amount of Rs.2,05,500/- was confirmed. In further appeal before the Tribunal, each and every transaction was examined by the Tribunal vis-a-vis, the evidence on record and the explanations furnished by the assessee and after a detailed discussion, some of the additions were deleted while some of them were

confirmed where, as a fact, it was found that though the amounts had been credited by the assessee in his books of accounts in the name of those persons and even though the persons were existing but the genuineness of the entry could not be proved for the reason that the persons were not capable of advancing the amount to the assessee keeping in view their financial position. Some of the creditors of the assessee were found to be mere labourers, milk vendors or some low paid employees who had their own families to support out of the income earned by them instead of advancing the loans to the assessee even without carrying any interest. Accordingly, on appreciation of the material on record, the authorities below concurrently found that the assessee had not been able to satisfy about the credit worthiness of the creditors and consequently the genuineness of the transaction.

The contention raised by the counsel for the assessee to support the case built up by him is on the basis of statements made before the authorities during the course of assessment proceedings. It was submitted that though other material in the form of affidavits was considered by the Assessing Officer but the statements were not considered which resulted in miscarriage of justice. We have even perused the statements, the same also do not advance the case of the assessee any further. All what has been stated in the statements is already considered and dealt with by the authorities below. Merely because in some case the amount was also shown to have been returned does not prove that the transaction in question was genuine or bonafide. No explanation could be furnished as to why and how a person who is running a electric repair shop in his house only or a person who is running a fruit rehri, a small time tent house, a jamadar at BKO and a milk vendor would advance amount to the assessee without any interest. The entire evidence does not inspire confidence.

The counsel for the assessee has further relied upon judgments in **Orient Trading Co. Ltd. Vs. Commissioner of Income-Tax (Central), Calcutta, (1963) 49 ITR 723(Bombay), Chhabildas Tribhuv Andas Shah and others Vs. Commissioner of Income-Tax, West Bengal, (1966) 59 ITR 733(SC), Sarogi Credit Corporation Vs. Commissioner of Income-Tax, Bihar, (1976) 103 ITR 344(Patna), Nemi Chand Kothari Vs. Commissioner of Income-Tax and another, (2003) 264 ITR 254(Gau)**

and **Commissioner of Income Tax Vs. Metachem Industries, (2000) 245 ITR 160(MP)**. The ratio of the judgments relied upon by the assessee does not support the case of the assessee rather it is evident that the views expressed by the authorities below are in conformity with the principles laid down in the judgments referred to above where it is held that to prove the genuineness of a cash credit entry, identity of the creditor, his credit worthiness and the genuineness of the transaction has to be proved. The assessee in the present case has failed to discharge the burden placed on him.

In **Oceanic Products Exporting Co. Vs. Commissioner of Income Tax, (2000) 241 ITR 497(Ker)** and **R.B.Mittal Vs. Commissioner of Income Tax, (2000) 246 ITR 283(AP),** the view taken is that the findings on cash credits are findings of fact. Under similar circumstances, this Court in ITC No. 1 of 1998 titled as **M/s Masu Ram Makhan Lal Vs. Commissioner of Income Tax**, vide judgment dated October 11, 2004, held that findings recorded on cash credits are findings of facts giving rise to no question of law, much less a substantial question of law being the requirement under Section 260A of the Act, for entertainment of the appeal.

Keeping in view the principles of law laid down in the judgments referred to above and also perusing the findings recorded by the authorities, we find that the view taken by the Tribunal is the only possible view keeping in view the material on record and the explanations furnished by the assessee. Re-appraisal of evidence does not fall within the domain of jurisdiction of this Court under Section 260-A of the Income Tax Act, 1961.

While agreeing with the view expressed by the Tribunal, we do not find any question of law much less a substantial question of law arising in the present case.

Accordingly, the appeal is dismissed.

(RAJESH BINDAL)
JUDGE

October 24, 2006 **(ADARSH KUMAR GOEL)**
renu **JUDGE**